

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Agenda Item 8**

**Agenda ID 12729**

**ENERGY DIVISION**

**RESOLUTION O-0057(rev.1)**

**March 13, 2014**

**RESOLUTION**

Resolution O-0057: Chevron Pipe Line Company proposes revisions to its Rules and Regulations Tariff, Cal. P.U.C. 45 to avoid contamination of product shipped on the Chevron Pipe Line Company systems. The revisions will be incorporated in a new Tariff, Cal. P.U.C. 52.

PROPOSED OUTCOME: This Resolution approves Chevron Pipe Line Company's proposed tariff revisions. The revisions provide strong incentives for shippers and the pipeline company to avoid product contamination. The resolution requires that the tariff incorporate changes and additions to its proposed revisions as agreed to in discussions between Chevron Pipe Line Company and Valero Marketing and Supply Company.

ESTIMATED COST: Unknown

SAFETY CONSIDERATIONS: There are inherent safety risks associated with the transportation of crude oil. Contamination of crude oil potentially further increases the consequences of any accident. This resolution approves steps to avoid product contamination which is consistent with the utility's responsibility to adhere to all commission rules, decisions, General Orders and statutes including Public Utility Code Section 451 requiring it to take all actions "...necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public."

By Advice Letter 49 filed on February 8, 2013.

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## **SUMMARY**

**This Resolution approves, with modifications, revisions to Chevron Pipe Line Company (CPL) Rules and Regulations Tariff governing the transportation of crude oil on the company's Kettleman to Los Medanos (KLM) System, Lost Hills Area Pipeline and Western San Joaquin Pipeline System.** The current Tariff, Cal. P.U.C. No. 45 will be replaced with the revised Tariff, Cal. P.U.C. 52. The revisions presented in Advice Letter (AL) 49 address methods to provide protections against the introduction of contaminated crude oil into pipelines and define responsibility for any contamination and its consequences. Further, the revisions make several minor changes of a ministerial clean-up nature that update information about the pipelines on which CPL provides its service.

## **BACKGROUND**

CPL operates multiple intrastate oil pipeline systems used for the transportation of crude oil including its KLM Pipeline System, Lost Hills Area Pipeline and Western San Joaquin Pipeline Systems.<sup>1</sup> While differing in size and scope, all three share similar operating circumstances with regard to the potential for contamination.

The largest among CPL's three systems is the 250 mile KLM Pipeline system which transports crude petroleum from production and other receipt points in the San Joaquin Valley to delivery points at refineries in Contra Costa County. After entering the KLM Pipeline, the various receipts of crude petroleum become commingled into a common stream that is delivered to refineries.<sup>2</sup> Because a common stream is created, it is imperative that all crude oil injected into the system be "merchantable" oil. If non-merchantable crude petroleum is injected at any receipt point it potentially contaminates the entire stream and under certain circumstances can damage refineries.

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<sup>1</sup> The Lost Hills Area Pipeline located in Bakersfield currently has no requests for service.

<sup>2</sup> In response to an Energy Division data request, CPL stated that both the Western San Joaquin Pipeline and the Lost Hills Area Pipeline would, in normal operation, be subject to the same commingling and contamination issues experienced on the KLM pipeline. However neither of these lines delivers directly to refineries.

**On September 14, 2012, CPL was notified that two of the three refineries connected to the KLM Pipeline had received contaminated crude petroleum.**

The crude petroleum contained elevated levels of organic chlorides. Organic chlorides are not naturally present in crude petroleum. However it is possible to introduce the substance at multiple points as petroleum moves downstream from producing wells to refineries (e.g. through cleaning operations at production sites or in storage tanks that use chemicals or solvents).<sup>3</sup> Elevated levels of organic chlorides in crude petroleum can lead to refinery equipment damage and harm refinery processes.

Due to the presence of organic chlorides in the petroleum in the KPL System, the refineries refused to accept further deliveries from the system. As a consequence the system became constrained and could not accept new receipts. CPL notes that as a result of the contamination event, the KLM Pipeline operated at significantly reduced capacity for almost three months. Over that period, CPL estimates that between 640,000 and 1,200,000 barrels of crude petroleum were impacted. CPL states that, immediately after receiving notification of the contamination and throughout the three months of reduced capacity, it worked with stakeholders, i.e., shippers, upstream producers, marketers and brokers that have commercial arrangements to sell or deliver crude petroleum to shippers on the KLM line, to produce an operating plan to purge the line, and take the actions needed to resume full operation. The KLM System returned to normal operations on December 10, 2012.

CPL summarizes the situation by stating that, "As the KLM Pipeline experience demonstrates, the contamination of an oil pipeline has adverse impacts on both operations upstream of the pipeline (the contaminated pipeline is unable to accept new supply, thus denying producers access to the market) and downstream of the pipeline (refineries may be damaged if they receive contaminated product, thus causing production facilities to be underutilized). Better protections against contamination by the shippers seeking transportation service on CPL's Commission-regulated pipelines will benefit all stakeholders."<sup>4</sup>

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<sup>3</sup> While the contamination discussed above was caused by a shipper it is also possible that contamination of this or another type could occur as a result of actions taken by the pipeline operator.

<sup>4</sup> CPL AL 49, p. 5-6.

CPL proposes two changes to its rules and regulations tariff. The first incorporates a 'clear identification' of what the AL refers to as "Prohibited Substances." The definition includes, among other items, organic chlorides. CPL states in its AL that it is unaware of any shipper opposition to the addition of a definition of contaminants and the inclusion of organic chlorides as a contaminant.<sup>5</sup> Further, the AL asserts that the inclusion of organic chlorides in a definition of prohibited substances/contaminants is consistent with other Commission authorized oil pipeline tariffs. CPL specifically references ConocoPhillips Pipe Line's tariff and the San Pablo Bay Pipeline Company tariff.<sup>6</sup>

The second proposed change to the rules and regulations tariff allocates responsibility for contamination and the resulting liability for damages to the shipper injecting the contaminant. The change is in a new tariff item, No. 15, Contamination, and, as proposed, reads:

"If, upon investigation, Carrier determines that a Shipper has delivered to Carrier's facilities Crude Petroleum that contains any contaminant or that is not good merchantable oil, Carrier may exclude that Shipper from further entry into applicable segments of the Carrier's pipeline system until such time as the Crude Petroleum that Shipper tenders to Carrier for Receipt meets quality and merchantability specifications to the satisfaction of the Carrier. Any Shipper that introduces contaminated Crude Petroleum (*i.e.*, Crude Petroleum containing any Contaminant or that is not good merchantable oil) into Carrier's system shall be liable to and indemnify Carrier for any and all costs, expenses (including reasonable attorneys' fees), damages, liabilities and losses (including lost transportation revenues) associated with, arising out of or in connection with the contamination of the Crude Petroleum.

If a Shipper or Consignee refuses to receive Crude Petroleum as a result of contamination, the Shipper that introduced contaminated Crude Petroleum into Carrier's system and the shipper or Consignee that refused to receive the contaminated Crude Petroleum shall be jointly and severally liable to

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<sup>5</sup> Contaminants are defined as "Waste oils, lube oils, crankcase oils, PCBs, dioxins, organic chlorides, chlorinated and/or oxygenated hydrocarbons, arsenic, lead or any other metals, chemical compounds, materials or substances that are not natural to Crude Petroleum, but not including any operational additive authorized by Carrier pursuant to Item No. 25 of this Rules and Regulations Tariff." *Ibid.*, p. 3 of Attachment A.

<sup>6</sup> CPL AL No. 49, p. 8. See also page 8 footnote 9 and page 9 footnote 10.

Carrier for any expense incurred by the Carrier in making the arrangements Carrier deems appropriate in order to clear its pipeline.”<sup>7</sup>

The AL asserts that this provides all stakeholders the best protection against contamination since the shipper has the greatest opportunity to prevent contamination and thus should have the financial responsibility for any damages resulting from contamination.

**CPL asserts that the Tariff revisions concerning contamination presented in AL 49 “provide shippers strong incentives to deliver product for the transportation service that is only ‘good merchantable oil.’”<sup>8</sup>** As such they are intended to provide ‘better protections’ against contamination by shippers to the benefit of all stakeholders.

In addition to the revisions focused on product contamination, CPL proposes “ministerial ‘clean up’ revisions to update information about CPL personnel changes and the pipelines on which CPL provides service in accordance with the Tariff.”<sup>9</sup> Specifically, these revisions involve:

1. Changing the name and contact information of the issuer and compiler of the tariff to current personnel; and
2. Deleting references to and provisions for the Inglewood/Northam and Rincon (Ventura) Pipeline Systems which CPL no longer owns.

Additionally, the existing tariff contains provisions related to Mixed Shipments that pertain to the service CPL previously provided on the Inglewood/Northam Pipeline. As CPL no longer provides the service nor owns the pipeline, the revisions remove Mixed Shipment provisions from the tariff and replace it with a statement that Mixed Shipments and Indirect Liquid Products of Oil and Gas Wells will not be accepted for transportation on the KLM, Lost Hills Area and Western San Joaquin Pipeline Systems.

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<sup>7</sup> Ibid., Attachment A p.8.

<sup>8</sup> Ibid., p. 1.

<sup>9</sup> Ibid., p. 6.

Prior to filing AL 49, CPL filed AL 47 and a corresponding application, Application (A.)12-11-027 on November 30, 2012. Both the AL and the application requested approval of a rate increase of ten percent on the KLM Pipeline. Neither the AL nor the application raised issues concerning the rules and regulations tariff governing the KLM Pipeline.

## **NOTICE**

Notice of AL 49 was made by publication in the Commission's Daily Calendar. Chevron Pipe Line Company states that, in accordance with General Order (GO) 96-B, Section 4, a copy of the Advice Letter was being sent electronically and via U.S. mail to parties shown on its service list attached to Advice Letter 49.

## **PROTESTS**

**Advice Letter 49 was protested by Tesoro Refining and Marketing Company LLC (Tesoro) and Valero Marketing and Supply Company (Valero).** Both protests were filed late. Each protest presents arguments concerning the protesting party's interests in and standing regarding the proposed tariff revisions presented in AL 49. Both protests also comment that the issues raised in AL 49 should be addressed in A.12-11-027 proceedings.

On March 25, 2013, Tesoro filed a late protest raising three issues. First, Tesoro asserts that AL 49 was not properly served. The protest comments that CPL failed to serve three individuals acting as counsel to Tesoro who had been previously included for service on matters concerning modifications to the CPL rules and regulations tariff. Second the protest argues that the AL 49 should be rejected because Tesoro requested, in a prehearing conference statement for A.12-11-027, that modifications to the rules and regulations tariff be included as part of the proceedings for that application. Third, Tesoro argues that the issues raised in AL 49 should be addressed in formal proceedings rather than in an AL because they (1) raise important policy issues; (2) are not made pursuant to or consistent with any statute or Commission decision; and (3) raise issues of fact appropriate for resolution in a formal proceeding.

On April 1, 2013 Valero filed a late protest. The protest focuses on issues specific to the tariff changes proposed by CPL. Specifically, Valero argues that the proposed changes should not make a consignee who refuses to accept a contaminated shipment jointly and severally liable with the shipper who caused the contamination. Additionally, Valero asserts that the tariff fails to recognize

that the pipeline itself could be the source of contamination and therefore, in that circumstance, have responsibility for the liability incurred.

**On September 5, 2013 CPL filed a reply to the protests of Tesoro and Valero.** The reply asserts that Tesoro's claims about CPL's service of the advice letter have been remedied by way of the Energy Division accepting Tesoro's late-filed protest. Further, the reply asserts that, since the scope of Application 12-11-027 specifically excludes issues concerning AL 49, Tesoro's assertion that these issues should be considered in that application have been addressed and rendered moot. With regard to the Valero protest, CPL comments that CPL and Valero have resolved the issues raised in the protest.

## **DISCUSSION**

**The Commission accepted late filed protests of Tesoro and Valero.** As shippers on the KLM line each has a significant interest in the changes proposed in AL 49. Both Tesoro and Valero have been shippers on the KLM system and were directly and significantly impacted by contamination on this system.

**There is no basis for Tesoro's assertion that AL 49 should be rejected for improper service. The information provided by CPL in response to an Energy Division data request indicates that CPL's service of AL 49 meets the requirements of GO 96-B. Tesoro's protest asserting improper service is ambiguous. AL 49 was served on several Tesoro individuals. Finally, Energy Division Staff's initial data request of Tesoro on the subject of proper service went unanswered.**<sup>10</sup>

**There is no requirement as part of GO 96-B that Tesoro's counsel, without specifically requesting that they be included, should have been automatically added to the service list for AL 49.** Tesoro asserts that CPL "failed to serve or notify counsel to Tesoro..."<sup>11</sup> and argues that, under Section 7.1 of GO 96-B, AL 49 should be rejected. Specifically, Tesoro contends that since attorneys

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<sup>10</sup> Tesoro did respond to a second data request related to the issue of service. However, this second request asked for different information than the request that Tesoro failed to respond to.

<sup>11</sup> Protest of Torsoro Refining & Marketing Company to Advice Letter No. 49 of Chevron Pipe Line Company, March 25, 2013, p. 3.

representing Tesoro participated in matters relating to a proposed CPL *rate increase* (AL 47 and A.12-11-027) and since Tesoro has raised the need for Tariff modifications in both proceedings, these three attorneys should have been served AL 49. However, the rate increase proceedings are a separate issue and neither the AL 47 nor A.12-11-027 raises issues concerning revisions to the rules and regulations tariff. Further the Scoping Ruling for A.12-11-027, reaffirmed in a ruling on August 27, 2013,<sup>12</sup> specifically excludes the tariff revisions from the proceedings noting that “the public interest is better served by leaving resolution of that issue to the process [i.e., AL 49 and its resolution] that is already underway.”

Tesoro’s protest also contends that, in addition to not notifying counsel, CPL failed to notify “relevant Tesoro personnel.”<sup>13</sup> First, as with the assertion that Tesoro’s counsel should have been served, there is no indication or assertion on Tesoro’s part that anyone other than those on the CPL Service List at the time AL 49 was filed requested to be added to that list. Further, Tesoro’s comments concerning who was served are unclear and ambiguous. Tesoro acknowledges that two employees it describes as not involved in the tariff modification discussions were served. However, the protest does not state that no one involved in revisions of the rules and regulations tariff changes were served, only that no one involved in what it describes, with no further information, as “detailed discussions” were not served. As such it remains unclear whether all employees, involved with the rules and regulations issues were excluded, or only those involved in what Tesoro describes as “detailed discussions.”

Further, GO 96-B, specifically requires that a person needs to *request* to be included and makes no provision to automatically include someone on a service list because of their participation in a different proceeding. Section 4.3 requires that each utility shall maintain at least one service list and “The utility shall include on the service list any person *who requests* such inclusion...” (emphasis added). Tesoro provides no information to indicate that the attorneys involved in the rate increase AL and application requested that they be added to a service list. Further, Tesoro failed to respond to a Data Request for information

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<sup>12</sup> Assigned Commissioner’s Ruling Granting Motion to Amend Scoping Ruling, August 27, 2013, p. 1. This ruling is discussed in following paragraphs.

<sup>13</sup> *Ibid.*, p.3.

concerning and supporting the inclusion of Tesoro counsel on the service list that was circulated for AL 49.

In response to a data request, CPL asserts that its service of AL 49 was appropriate and sufficient. In its response, CPL states that, "In compliance with GO 96-B, Rule 4.3, CPL maintains an official Service List and serves each person or entity designated on its GO 96-B Service with all advice letter filings. CPL submitted Advice Letter 49 to the Energy Division on February 8, 2013, and served its entire GO 96-B Service List with CPL Advice Letter 49, including the two Tesoro representatives on that list."<sup>14</sup> The CPL response notes that beyond the GO 96-B requirements, it maintains a "Subscriber List" that includes representatives of each of the shippers on any CPL CPUC-regulated pipeline and serves each member of the Subscriber List with any advice letter it submits. That list included two additional Tesoro representatives and a Tesoro corporate email drop box that received AL 49 on February 8, 2013. Based on CPL's response, four Tesoro employees were served notice of AL 49 on the date it was filed.

In summary, it was Tesoro's responsibility to request inclusion of its outside counsel on the Chevron service list. It is also apparent that Tesoro personnel who were served saw no reason to communicate with outside counsel on the matter of AL 49. Further, Tesoro failed to respond to the Commission's data request that; (1) asked for information supporting its assertion of improper service; and, (2) requested contact information to allow the Commission to serve notice on individuals Tesoro requested be served. This failure to respond combined with the above calls into question the seriousness of Tesoro's assertions and concern over alleged improper service.<sup>15</sup>

**Independent of any issue of service, the Energy Division has accepted the protest of Tesoro, and reviewed and responded to its content.** As such Tesoro has been afforded the same opportunity to raise its objections to the proposed tariff revisions, present alternatives and have those and other issues reviewed and considered by the Commission as it would have had if counsel had been served.

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<sup>14</sup> Chevron Pipe Line Company 7/1/2013 response to Energy Division data request item 2.

<sup>15</sup> Tesoro did respond to a second data request as noted in footnote 7

**There is nothing in the Tesoro protest that demonstrates the necessity of combining AL 49 with the Chevron's separately filed rate increase proceedings in A.12-11-037 and AL 47. In fact, the Scoping Ruling for A.12-11-027 specifically excludes the tariff.** The scoping ruling states that "the public interest is better served by leaving resolution of that issue to the process [i.e., AL 49 and its resolution] that is already underway." Exclusion of matters concerning the Chevron rules and regulations tariff presented in AL 49 were reaffirmed in the Assigned Commissioner's Ruling Granting Motion to Amend Scoping Ruling of August 27, 2013 which stated, regarding A.12-11-027, "all proposed tariff changes...should be addressed in the AL 49 review."<sup>16</sup> AL 49 addresses matters that are distinct from the issues being considered in the proceeding concerning CPL's rate increase.

Tesoro's second argument for rejecting AL 49 is that in its protest of CPL's rate increase application, filed before AL 49, Tesoro argued that "any rate increase should be contingent on modification of the KLM Tariff to avoid future contamination events and ensure safe and reliable service."<sup>17</sup> Further Tesoro notes that it had requested that the scoping ruling for the rate increase proceeding include modification of the rules and regulations tariff as an issue in evidentiary hearings. Tesoro suggests, without any specific reference regarding the rules and regulation tariff, that the ALJ's decision to require evidentiary hearings in A.12-11-027 is an endorsement of its position that AL 49 be included in the rate increase proceeding. The protest concludes on this matter by stating "Given that Tesoro has already raised modification of the Tariff in A.12-11-027, AL 49 should be rejected. Addressing Tariff modifications in one proceeding, rather than two, promotes efficiency and avoids inconsistent outcomes."<sup>18</sup> Beyond these broad statements the protest provides no specific reason why it is appropriate or necessary to use the rate increase proceeding as the venue to resolve issues and concerns about the rules and regulations tariff. Tesoro provides no basis on which to argue that combining the two issues in one proceeding will promote efficiency and neglects the possibility that combining the two may diminish the importance of the rules and regulations and delay and

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<sup>16</sup> Ibid., p. 1.

<sup>17</sup> Protest of Tesoro Refining & Marketing Company to Advice Letter No. 49 of Chevron Pipe Line Company, March 25, 2013, p.2.

<sup>18</sup> Ibid., p.2.

complicate the opportunity of Tesoro and others to provide input and reach agreement concerning the rules and regulations tariff. Additionally, there is no basis on which to suggest that there will be an inconsistent outcome. The process to determine the appropriateness of the rate increase is well defined and independent of the issues concerning the rules and regulations. Whether CPL's requested increase is approved in whole, in part, or not at all has no impact on the need to address the issue of contamination and no argument has been made that it will impact the content of the modifications as presented in AL 49. Conversely, the financial and economic considerations in a cost of service analysis used to determine the appropriateness of a rate increase is not dependent on the rules and regulations tariff.

Finally, as stated previously, the issues concerning revisions to the CPL rules and regulations tariff have been explicitly excluded from the A.12-11-027 proceedings. Issues concerning these tariff changes have no home other than in the context of AL 49.

**The Tesoro protest provides no substance to its claims that the issues raised in AL 49 are inappropriate for an Advice Letter.** The protest fails to identify policy issues in the AL as grounds for rejection, ignores prior Commission decisions and statutes relative to the actions requested in the AL and presents no material facts or issues of fact in dispute consistent with its argument that an Advice Letter is not appropriate.

Tesoro asserts that the issues raised in AL 49 are not appropriate to an Advice Letter because AL 49 (a) is controversial and raises policy questions; (b) the proposed tariff changes are not made pursuant to or consistent with, any statute or Commission Decision; and (c) raises issues of fact that are appropriate for resolution in a formal proceeding.

Tesoro asserts that the AL raises "important policy questions" but fails to identify or provide any statement as to the content or subject of those policy questions. Nor does the protest point to issues of a controversial nature arising from the Advice Letter. The protest further asserts that the modifications proposed in AL 49 were not made pursuant to, or consistent with, any statute or Commission decision. This assertion neglects to acknowledge that the key modification concerning contamination proposed in AL 49 parallels and is consistent with that found in the tariff for San Pablo Bay Pipeline Company *authored in part by Tesoro and adopted as part of Commission Decision 11-05-026.*

**The modifications proposed by CPL in this advice letter are targeted at avoiding product contamination and the risks that contamination presents, and are therefore an important element of maintaining a safe oil pipeline system.**

As noted under the “Safety Considerations” section of this resolution, the modifications are proposed to avoid product contamination and the risks that contamination presents. The proposed tariff revisions are intended to meet CPL’s responsibility to adhere to all commission rules, decisions, General Orders and statutes including Public Utility Code, Article 1, Section 451, to take all actions “necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public”. In this regard, the proposed modifications are the appropriate subject of an Advice Letter as they seek to conform the tariffs to the requirements of a statute or Commission order. Finally, Tesoro presents no material facts or issues of fact in dispute consistent with its call for a formal proceeding. Rather it asserts only broad commentary concerning the appropriateness of addressing the modifications to the tariff through an Advice Letter. Lacking information to the contrary and with the content of AL 49 being consistent with the subject of a Tier 3 Advice Letter there is no reason to reject the Advice Letter as argued by the protest.

**Tesoro did not identify specific issues or address the specific content of the Advice Letter and its proposed modifications.** As such Tesoro has provided no information concerning any changes that it considers necessary to address the contamination provisions or other content of the tariff. The sole focus of the Tesoro protest was to have AL 49 rejected and the rules and regulations tariff addressed in a different, formal, proceeding, A.12-11-027, which would include evidentiary hearings.

**Tesoro does not expressly request evidentiary hearings as part of its protest of AL 49 nor did it provide, within the protest, the necessary information required for an evidentiary hearing.** Tesoro, considers the issues raised in AL 49 to be part of A.12-11-027 and the protest seeks solely to have the AL rejected. As discussed in the preceding paragraphs, there is no clear basis on which to expect that evidentiary hearings concerning proposed rules and regulations tariff changes will or should be part of CPL’s rate increase proceeding.

Notwithstanding that, Tesoro, as part of its protest of AL 49, could have but did not specifically request evidentiary hearings. GO 96-B, Section 7.4.1 states that

*“If the protestant believes that the Commission should hold an evidentiary hearing, the protest must expressly request and explain the need for an evidentiary hearing. The explanation must identify material disputed facts and say why a hearing must be held. Any right a protestant may otherwise have to an evidentiary hearing will be waived if the protestant does not follow this procedure for requesting one.”*

The protest makes clear Tesoro’s ‘belief’ that an evidentiary hearing is necessary. However, Tesoro fails, in its protest, to meet the three criteria identified in GO 96-B, Section 7.4.1 for evidentiary hearings. Specifically, Tesoro 1) fails to expressly request an evidentiary hearing but rather seeks to have the Advice Letter rejected asserting that the issues raised are part of the A.12-11-027 proceeding; 2) fails to identify material disputed facts; and, 3) incorrectly argues that hearings must be held because the issues in AL 49 are not appropriate to an Advice Letter. In making the argument that the issues are inappropriate to an AL Tesoro states that (a) AL 49 is controversial and raises policy questions; (b) the proposed tariff changes are not made pursuant to or consistent with, any statute or Commission Decision; and (c) raises issues of fact that are appropriate for resolution in a formal proceeding. However, the protest provides no presentation or discussion of any issues of a controversial or policy nature, how the proposed tariff revisions are not consistent with prior Commission actions, and presents no material facts or issues of fact in dispute. Instead, Tesoro provides only broad commentary concerning the appropriateness of addressing the modifications to the tariff through an Advice Letter. Contrary to Tesoro’s general argument and lacking any specific information demonstrating the basis for its argument, the Commission finds the revisions to be appropriate to an Advice Letter filing.

**The Commission accepts the resolution of tariff issues jointly arrived at by Valero and CPL. In ongoing discussions between Valero and CPL the two parties have fully resolved, subject to acceptance by the Commission, the issues raised in the Valero protest.** Valero’s first issue concerns CPL’s provision that the shipper and the consignee be jointly and severally liable for the costs of clearing CPL’s pipeline incurred as a result of contaminated crude petroleum. The Valero protest indicates that it generally supports the principle that a shipper delivering contaminants

into the system should be held responsible for that contamination. It goes on to state that “changes implementing this principle, however, must apportion liability fairly and respect the interests of all parties to transactions involving the transportation of crude petroleum. Only those parties responsible for the introduction of the contaminants should bear liability for the consequences of the contamination.” The protest asserts that the CPL proposed revisions ignore this principle by imposing liability on a consignee that refuses to accept contaminated crude. Specifically Valero notes Item No. 32<sup>19</sup> of the Proposed Tariff requires that “in the event that the consignee of a shipment refuses to accept a contaminated shipment, the proposed tariff would make the shipper and the consignee ‘jointly and severally liable...for any expense by the Carrier in making the arrangements Carrier deems necessary in order to clear its pipeline.’”<sup>20</sup> Valero cites CPL’s own argument that “placing liability on the shipper injecting contaminated crude into the pipeline is reasonable ‘because, as between the pipeline and the shipper, the party with the greatest opportunity to prevent the contamination also has the financial responsibility for the wrongful injection of non-merchantable crude petroleum’”. Valero then argues that “This logic applies equally to a consignee who receives contaminated crude. The consignee, in fact, has no more – and perhaps even less – ability than the pipeline to determine whether a shipment has been contaminated or to prevent that contamination.”<sup>21</sup> Valero concludes its argument by noting that the consignee is frequently a refinery and as acknowledged by CPL contaminated product will potentially harm the refinery. Therefore, the consignee must reject the contaminated crude. Valero adds that CPL’s proposed “...tariff unreasonably places greater weight on the pipeline’s need to clear the pipeline of contaminated crude than on the consignee’s need to prevent harm to its refinery. There is no rational basis for this disparity in treatment or for placing liability on a consignee with no culpability for introducing contaminated crude into the system.”<sup>22</sup>

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<sup>19</sup> Advice Letter 49 incorrectly referenced Tariff item No. 32 and Valero repeated the incorrect reference in its protest. The correct reference is Tariff item No. 15.

<sup>20</sup> April 1, 2013 Valero Protest of CPL Advice Letter No. 49, p.2.

<sup>21</sup> Ibid., p.2.

<sup>22</sup> Ibid., p.2.

The Valero protest states its support for alternative language similar to that included in a San Pablo Bay Pipeline Company tariff. Valero notes that this tariff which includes a contamination provision was adopted by the Commission. Valero states that CPL referenced this tariff in developing language concerning contamination by shippers. The protest further comments that the language in the San Pablo Bay Pipeline Company tariff “rationally apportions responsibility to the most culpable party, was supported by Valero, Tesoro and CPL’s affiliate Chevron Products Company who were the ‘Independent Shippers’ in the San Pablo Bay [Pipeline Company] proceeding, and protects the interests of the pipeline, as well as other shippers and consignees.”<sup>23</sup>

**As an outcome of discussions between Valero and CPL, CPL withdrew the language originally proposed in AL 49 that made the Consignee jointly and severally liable to the Carrier for any expense incurred by the Carrier in making arrangements in order to clear its pipeline. The Commission finds these revisions resulting from the agreement between the parties reasonable.** CPL replaced it with language similar and with substantially the same effect as that used in the San Pablo Bay Pipeline Company tariff. The new language is acceptable to Valero. The commission agrees with the newly proposed change as agreed by Valero and shown in a joint response to Energy Division data requests made to both Valero and CPL.<sup>24</sup>

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<sup>23</sup> Ibid., p.3.

<sup>24</sup> The modification originally proposed in AL 49 stated that “If a shipper or Consignee refuses to receive Crude Petroleum as a result of contamination, the Shipper that introduced contaminated Crude Petroleum into Carrier’s system and shipper or Consignee that refused to receive the contaminated Crude Petroleum shall be jointly and severally liable to Carrier for any expense incurred by the Carrier in making the arrangements Carrier deems appropriate in order to clear its pipeline.” The newly proposed language replaces this language with the statement that, “Further in accordance with Item 7, Carrier retains the right to make commercially reasonable arrangements for the disposition of any contaminated Crude Petroleum it deems necessary to clear its pipeline.” The Energy Division made separate but essentially the same data requests to both CPL and Valero concerning the status and outcome of their discussions of the proposed AL 49 tariff revisions. Valero and CPL requested and the Energy Division accepted their request that they make a joint response to the data requests.

Valero's second issue raised in its protest contends that "CPL's proposed tariff ignores the possibility that the pipeline itself could be responsible for...contamination." The Valero protest comments that "Contrary to CPL's contention that 'the presence of contaminated crude petroleum within an oil pipeline does not result from the pipeline's physical facilities,' organic chlorides can be introduced into crude oil through a pipeline's tank cleaning or other cleaning process. ...Such contamination would occur through no fault of any shipper or consignee." Valero goes on to argue that "If the contamination is the result of the pipeline's activities, the pipeline should make all affected shippers whole, and any revised tariff language should ensure that the pipeline is liable if the introduction of organic chlorides or other contaminants is the result of the pipeline's own activities or negligence."<sup>25</sup>

In response to a data request CPL noted that item 17 of the existing Tariff No. 45, "imposes responsibility on the pipeline for damages caused by 'sole negligence of the Carrier,'" and further comments that CPL "was making no proposal in the Advice Letter to eliminate the pipeline's possible liability with respect to its 'sole negligence' as contemplated by Item 17."<sup>26</sup> Notwithstanding this position, CPL agreed to make additional changes to its proposed tariff with respect to the Carrier's liability. The data request response documenting discussions and agreements between CPL and Valero states that CPL agreed first to add a paragraph to Item 15 to reaffirm that proposed Tariff 52 is not seeking to reduce the scope of the pipeline's responsibility for contamination from current provisions in Item 17. Secondly, CPL agreed to revise Item 17 in response to a Valero request. The revision includes a 'willful misconduct' liability standard in addition to Item 17's 'sole negligence' standard.<sup>27</sup> The Commission agrees with these revisions resulting from the agreement between the parties.

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<sup>25</sup> Ibid., p.3.

<sup>26</sup> Joint response to Energy Division data request, p.3.

<sup>27</sup> The paragraph being added reads: "This Item 15 does not modify, revise or amend Item 17 with respect to the scope of, and limitations upon, Carrier's liability for damage, loss or delay while Crude Petroleum is in Carrier's possession." The addition of a willful misconduct standard in Item 17 revises the last clause of the second paragraph adding the words 'or willful misconduct' to read: "from any cause not due to the sole negligence or *willful misconduct* of the

*Footnote continued on next page*

**The inclusion of CPL's proposed definition of contaminants was not protested and the Commission, consistent with other Commission approved tariffs, approves incorporating the change in CPL's rules and regulation tariff.**

**The Commission accepts various ministerial/clean-up revisions as proposed.** These revisions (1) change the name and contact information of the issuer and compiler of the tariff to current personnel; and (2) delete references to and provisions for the Inglewood/Northam and Rincon (Ventura) Pipeline Systems which CPL no longer owns. Further the revisions remove reference to a mixed shipments service no longer provided as a result of the sale of the Inglewood/Northam and replace it with a statement that mixed shipments and indirect product liquids will not be accepted on its lines.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from the date mailed.

Comments were filed on March 3, 2014 by Tesoro and by CPL.

The comments by Tesoro mirror assertions presented in its protest of AL 49. Tesoro then asserts that the revisions to the CPL Rules and Regulations tariff must be addressed through the filing of an Application. Tesoro bases this on its

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Carrier" (italics added). Joint Response to Energy Division Data Request. Chevron Pipe Line Company (PLC-13) - Advice Letter No. 49 Chevron Pipe Line Company Response to April 24, 2013 Energy Division Data Request 1 Valero Response to April 26, 2013 Energy Division Data Request 1. May 3, 2013. p. 3.

contention that the AL raises policy questions and issues of a controversial nature. However, the comments provide no support for assertion of policy issues and suggest that because Tesoro protested the Advice Letter it therefore contains controversial issues. Further, the comments imply that, although Tesoro's protest may have failed to identify policy and/or controversial issues, since the resolution differs from Tesoro's broad assertions, there must not have been an adequate review of the Advice Letter. Finally, the comments make multiple inaccurate statements and ignore the modifications required by the resolution.

For the purposes of clarification, independent of whether protests are filed by Tesoro or any party, all Advice Letters are carefully reviewed including consideration of whether the Advice Letter raises issues that fall outside of the rules governing the Advice Letter process. If the review determines that the issues raised are inappropriate for the Advice Letter process the AL is rejected or other action may be ordered. When protests are submitted they are also considered, based on their content, as part of the overall review of the Advice Letter. This process was followed regarding AL 49 - the advice letter was reviewed, and as protests were filed, the protests were considered. The fact that the resolution refutes Tesoro's assertions in its protest is testimony to that review, not an indication that it did not take place.

Tesoro's comments begin by reasserting that the tariff modifications are not appropriate for disposition through an advice letter . In essence it argues that the AL was not properly reviewed since the review did not find the controversy and policy issues that Tesoro says exist but has not presented or substantiated.<sup>28</sup> Finally, Tesoro misrepresents the Resolution's reference to safety. It omits the fact that because there are inherent safety risks, CPL must comply with Public Utility Code Section 451 requiring that it take all actions "necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public." In this regard, modifications proposed in the AL seek to comply with this requirement and, as such are an appropriate subject for the Advice Letter process.

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<sup>28</sup> Tesoro's comments introduce a new argument based on D.12-01-0133 but fails to recognize that the item it references concerns the unique risks of the nuclear industry and the approval process for PG&E contracts.

Tesoro next restates its position that its protest did identify raise policy issues. It makes the statement that the protest raised fundamental concerns that shippers bear complete responsibility for any contamination and that the protest argued that the carrier should be required to conduct regular testing to ensure the safety and integrity of the pipeline infrastructure . However, a thorough review of the protest finds no reference to these stated concerns or argument.<sup>29</sup>

As noted above Tesoro asserts that AL 49 was controversial “by virtue of the fact that it was contested by Tesoro and Valero.” However, the mere act of filing a protest, particularly when the protest makes broad unsubstantiated statements, does not mean that the advice letter is substantively controversial such that an application is required. Valero, in its protest raised specific issues concerning the modifications. The Commission shared and agreed with the substance of Valero’s concerns. The Commission recognizes and appreciates Valero and CPL’s independent work to propose specific changes to the modifications as originally proposed. Absent that work, the resolution would have ordered CPL to make modifications addressing the Commission’s concerns (consistent with those also identified by Valero) and file a supplemental AL with the modifications. This is a common and accepted process.

Tesoro next restates its arguments that the relief requested requires formal hearings yet fails to provide any comment specific to that relief, i.e., the tariff changes proposed in AL 49 and the required modifications to those changes. Following, the comments correctly note the resolution’s agreement that contamination could be the result of actions taken by the pipeline operator. This recognizes the fact that organic chlorides are not naturally occurring, that they would have to be introduced in the upstream movement and agrees with the possibility that they could also be the result of contamination by the operator. For clarification, this resolution does not ignore CPL’s assertion that contamination is introduced at some stage in the upstream movement. The resolution agrees that this is one source but also notes that it is not the only source. The resolution notes that contamination could be the result of actions by

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<sup>29</sup> The review included several re-readings of the protest. A word search including the words safety, integrity, infrastructure, testing, and responsibility shows no results. A search of “contamination” produces several results but none in the context of the statement made in Tesoro’s comments.

the pipeline operator. As discussed, the resolution requires a modification that addresses and confirms CPL liability for contamination it may cause through its operations.

Tesoro follows with a discussion of testing not presented in its protest. The discussion does not address or contest any of the issues related to the practicality of testing and its limitations as presented by CPL in its advice letter. Nor do the comments provide any solution that assures that all possible contamination could be detected and avoided. Absent this Tesoro provides no comment why the party, whether a shipper or CPL, causing the contamination should not be held responsible. Rather it appears to suggest that CPL should assume all of the responsibility and rely on periodic tests in an effort to stop the bad actor. It does not comment on CPL's assertions that the tests are limited, there is no agreement on a test for organic chlorides, and as to the practicality of testing for the vast array of possible contaminants as discussed by CPL in its advice letter.

Tesoro proceeds to discuss the San Pablo Bay Pipeline Company (SPBPC) tariff. Its comments both dismiss the relevance of the tariff and then evoke the importance of the tariff concerning testing. Tesoro fails to note that the testing it references in the SPBPC tariff is volumetric testing. Further, Tesoro quotes the SPBPC tariff as requiring testing and states that in contrast CPL merely reserves the right to test. This completely misrepresents the facts. Tesoro's quote from the SPBPC tariff noting that testing is required, "All shipments tendered for transportation to and from Carrier shall be tested, gauged or metered", is repeated word for word in CPL's tariff language.<sup>30</sup>

Tesoro's comments recognize that the issue of service presented in its protest is moot. However Tesoro is in error when it comments that it responded to all data requests. A review indicates that Tesoro failed to respond to the Commission's data request concerning the issue of service, "Data Request: Protest of Tesoro Refining & Marketing Company to Advice Letter 49 of Chevron Pipeline Company sent via email to Mr. Stoddard on July 16, 2013."<sup>31</sup>

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<sup>30</sup> Advice Letter 49 Attachment A, item no. 11, p.6.

<sup>31</sup> It is worth noting that Tesoro itself failed to properly serve comments to the draft Resolution. It later acknowledged that it "may" not have served properly and Tesoro corrected its apparent error.

Finally, Tesoro's comments on its request to reject AL 49 and combine the rules and regulations tariff, and the ruling in A. 12-11-027 has been addressed in the Discussion and as further noted below, may become moot.

CPL provided comments supporting the resolution. CPL's comments also noted that "subsequent events have rendered moot Tesoro's arguments that an inextricable nexus exists between the otherwise separate and discrete requests to increase rates on individual pipeline systems and to revise operating tariffs for all CPL pipelines. On February 10, 2014, CPL filed a motion requesting to withdraw Application 12-11-027. Assuming the Commission grants the CPL Withdrawal Motion, Tesoro's argument that 'any rate increase' for CPL 'be contingent on modification' of the Rules and Regulations Tariff will be moot."<sup>32</sup> The Commission has not yet granted the Withdrawal Motion.

## **FINDINGS AND CONCLUSIONS**

1. On September 14, 2012 Chevron Pipe Line Company was notified by two refineries connected to its Kettleman to Los Medanos System pipeline that they received contaminated crude petroleum. The crude petroleum contained elevated levels of organic chlorides.
2. Organic chlorides are not naturally occurring in crude petroleum. However, it is possible to introduce the substance at several points, typically receipt points on the line as product moves from producing wells to refineries.
3. Elevated levels of organic chlorides in crude petroleum can lead to refinery equipment damages and harm refinery processes.
4. Within the Chevron Pipe Line Company systems, receipts of crude petroleum from multiple sources become comingled into a common stream that is delivered to refineries. The introduction of contaminated product at one receipt point results in the potential contamination of the entire comingled product.
5. As a result of the contamination reported on September 14, 2013, the pipeline operated at significantly reduced capacity for three months. The interruption to normal pipeline operation affected both upstream and downstream operations. Between 640,000 and 1,200,000 barrels of crude petroleum were impacted.

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<sup>32</sup> Chevron Pipe Line Company Comments on Draft Resolution O-0057. March 3, 2014. p. 3.

## Chevron Pipeline Company AL 49/gsr

6. Chevron Pipe Line Company is required to adhere to all commission rules, decisions, General Orders and statutes including Public Utility Code Section 451 requiring it to take all actions "...necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public."
7. Advice Letter 49 proposes revisions to existing Chevron Pipe Line Rules and Regulations Tariff. Cal. P.U.C. No. 45 and would replace it with Cal. P.U.C. No. 52. The revisions provide strong incentives to shippers, and to the pipeline company, to avoid contamination. Additionally, the revisions are consistent with Chevron Pipe Line Company's responsibilities under Public Utility Code Section 451.
8. Advice Letter 49 was late protested by Tesoro Refining and Marketing Company LLC and Valero Marketing and Supply Company. Both companies are shippers on the Kettleman to Medanos System and were directly and significantly impacted by the contamination on this system. Based on these considerations, the late filed protests were accepted and reviewed as part of this Resolution.
9. The Tesoro Refining and Marketing Company LLC protest asserts that:
  - (1) Advice Letter 49 was improperly served as outside counsel did not receive notice;
  - (2) revision of Cal. P.U.C. No. 45 should be included in the proceedings of Chevron Pipe Line Company Application 12-11-027; and,
  - (3) the issues raised in the advice letter are not appropriate to the advice letter process and should be addressed in formal proceedings.
10. Advice Letter 49 was properly served. Tesoro Refining and Marketing Company LLC did not request, under General Order 96-B, Section 4.3, that outside counsel be added to the service list. Further, each of the multiple Tesoro employees on CPL's service list and Subscriber List did receive notice of Advice Letter 49.
11. The Commission's scoping ruling for Application 12-11-027 explicitly excludes all issues raised in AL 49 related to the Rules and Regulations Tariff and finds that they should be addressed in the review of Advice Letter 49.
12. The Tesoro Refining and Marketing Company LLC late filed protest provides no information supporting its assertions that the issues raised in Advice Letter 49 are not appropriate to the advice letter process.
13. Further, the Tesoro protest incorrectly asserts that Advice Letter 49 revisions are not made pursuant to, or consistent with any statute or Commission decision. The protest ignores Public Utility Code Section 451 and prior Commission Decision 11-05-026 which adopted a tariff for San Pablo Bay Pipeline Company with contamination provisions authored in part by Tesoro

Refining and Marketing Company LLC and mirrored in Chevron Pipe Line revisions.

14. The Valero Marketing and Supply Company protest is focused on two specific issues related to the proposed revisions: (1) consignees refusing to accept a shipment contaminated by a shipper should not be made jointly and severally liable with the shipper for the contamination; and, (2) the tariff fails to recognize that the pipeline itself could be the source of contamination and therefore, have responsibility for the liability incurred.
15. Valero Marketing and Supply Company and Chevron Pipe Line Company held discussions concerning the two issues raised in the protest. As a result of those discussions, the issues raised by Valero have been resolved and Chevron Pipe Line Company has agreed to incorporate changes and additions to the revisions it proposed in Advice Letter 49.
16. The changes proposed as a result of the discussions enhance the proposed new Tariff and should be incorporated into the Rules and Regulations as agreed to by the parties.
17. The clean-up revisions are appropriate and should be incorporated into the Rules and Regulations.
18. Both Tesoro and CPL filed comments to the draft resolution. Tesoro's comments repeat the content of its protest and CPL states its agreement with the resolution.
19. Advice Letter 49 should be approved subject to modification incorporating the changes agreed to by Valero Marketing and Supply Company and Chevron Pipeline Company.

**THEREFORE IT IS ORDERED THAT:**

1. The request of the Chevron Pipe Line Company to revise its Rules and Regulations Tariff is approved subject to modification.
2. Chevron Pipe Line Company shall, within 30 days, file a supplement to Advice Letter 49 modifying the proposed Rules and Regulations tariff Cal. P.U.C. No. 52 to incorporate the changes agreed to in discussions with Valero Marketing and Supply Company and documented in the joint reply to the data request submitted by the Energy Division of the Commission

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 13, 2014 the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director